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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

SUN DRILLING PRODUCTS CORPORATION, HELLER, HICKOX, DIMELING, SCHREIBER AND PARK, DOUGLAS P. HELLER, GEORGE K. HICKOX, JR., WILLIAM R. DIMELING, RICHARD R. SCHREIBER, STEVEN J. PARK, JOHN C. TUTEN, HYPPOLETE ASTUGUE AND SUSAN REESE

Petitioners,

v.

JERRY J. RAYBORN, SR.

Respondent,

On Petition For A Writ Of Certiorari To The Court Of Appeal Fourth Circuit State Of Louisiana

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court's holding in *Prima Paint*, that an arbitration clause in a contract governed by the Federal Arbitration Act is not vitiated by general allegations that the entire contract was fraudulently induced, was overruled by this Court's subsequent decision in *Doctor's Associates*, which did not address the key issues in *Prima Paint* and made no mention of *Prima Paint* whatsoever.

2. Whether, in direct contravention of this Court's holding in *Prima Paint*, the Louisiana Fourth Circuit Court of Appeal erred by refusing to enforce a mandatory arbitration clause in an agreement it acknowledged was governed by the Federal Arbitration Act, where respondent sought to avoid his agreement to arbitrate simply by making general allegations of fraud in the inducement of the contract as a whole.

PARTIES TO THE PROCEEDING

Sun Drilling Products Corporation has no parent companies. Sun Drilling Products Corporation partially owns Sun Drilling Products de Venezuela, C.A.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

No. 98-

SUN DRILLING PRODUCTS CORPORATION, HELLER, HICKOX, DIMELING, SCHREIBER AND PARK, DOUGLAS P. HELLER, GEORGE K. HICKOX, JR., WILLIAM R. DIMELING, RICHARD R. SCHREIBER, STEVEN J. PARK, JOHN C. TUTEN, HYPPOLETE ASTUGUE AND SUSAN REESE

PETITIONERS,

vs.

JERRY J. RAYBORN, SR.

RESPONDENT,

Petition For A Writ Of Certiorari
To The Court Of Appeal
Fourth Circuit State Of Louisiana

Sun Drilling Products Corporation, Heller, Hickox, Dimeling, Schreiber and Park, Douglas P. Heller, George K. Hickox, Jr., William R. Dimeling, Richard R. Schreiber, Steven J. Park, John C. Tuten, Hyppolete Astugue and Susan Reese respectfully petition for a writ of certiorari to review

the judgment of the Court of Appeal Fourth Circuit State of Louisiana in this case.

OPINIONS BELOW

The opinion of the Court of Appeal Fourth Circuit State of Louisiana (App., *infra*, 3a) is reported at *Sun Drilling Products Corp. v. Rayborn*, 703 So.2d 818 (La. Ct. App. 1997). The judgment of the trial court (App., *infra*, 13a) is unreported. The order of the Louisiana Supreme Court denying discretionary review (App., *infra*, 1a) is unreported.

JURISDICTION

a) On March 13, 1998, the Supreme Court of Louisiana declined to review the order dated December 3, 1997 of the Court of Appeal Fourth Circuit State of Louisiana.

b) The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

c) On June 10, 1997, Petitioners, by means of filing objections to the trial court's subject matter jurisdiction, invoked their rights under the Federal Arbitration Act to compel arbitration of Rayborn's claims. On August 21, 1997, the trial court overruled Petitioners' objections. Petitioners timely appealed this decision to the Court of Appeal Fourth Circuit State of Louisiana. The Court of Appeal affirmed the trial court's decision. Petitioners' timely application for rehearing before the Court of Appeal was refused without comment on December 30, 1997. Finally, Petitioner sought discretionary review from the Louisiana Supreme Court. On March 13, 1998, Petitioners' application for review was denied, with two Justices voting to grant the application.

STATUTORY PROVISIONS INVOLVED

The Federal Arbitration Act provides, in pertinent part, 9 U.S.C. § 1-14 (1998):

9 U.S.C. § 1: "Maritime transactions" and "commerce" defined; exceptions to operation of title.

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United Sates or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

9 U.S.C. § 2: Validity, irrevocability and enforcement of agreements to arbitrate.

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

STATEMENT OF THE CASE

Until 1995, Jerry J. Rayborn, Sr. (hereinafter "Rayborn") and his three children owned all of the shares of stock of Sun Drilling Products Corporation (hereinafter "Sun"). In 1995, Rayborn and his family sold 75% of Sun's stock to, *inter alia*, the partners of Heller, Hickox, Dimeling, Schreiber and Park (hereinafter "HHDS&P") for $9.5 million, notes in the amount of $2.8 million, and debt forgiveness of several million dollars. The terms of the sale were set forth in a December 8, 1994 contract known as the "Merger Agreement" between Rayborn and his family and the partners of HHDS&P. The Merger Agreement contained a mandatory arbitration clause. (App., *infra*, 20a).

After the sale of Sun, Rayborn was a 25% minority shareholder and a member of Sun's board. Sun and Rayborn entered into an employment agreement ("the Employment Agreement") which provided for Sun to employ Rayborn at a

salary of $120,000 per year, plus future royalty payments under certain circumstances. Among other things, the Employment Agreement required Rayborn to devote his best efforts to the performance of his duties in furtherance of Sun's interests. The Employment Agreement did not contain an arbitration clause.

On March 17, 1997, Sun terminated Rayborn's employment because he breached his Employment Agreement, breached his fiduciary duties to Sun as a director and shareholder, and engaged in schemes to Sun's detriment. Concurrent with his firing, Sun filed an action in Louisiana state court seeking damages and a declaratory judgment that Rayborn had breached the Employment Agreement.

Sun neither requested relief under the Merger Agreement nor alleged that the Merger Agreement was implicated in any manner. Sun based its action against Rayborn on the Employment Agreement, not the Merger Agreement.

On May 1, 1997, Rayborn filed his Answer to Sun's action. In his Answer, Rayborn included a claim seeking rescission of the Merger Agreement, alleging fraud in the inducement. Rayborn also purported to assert other claims against HHDS&P and other parties arising from the Merger Agreement. Rayborn and certain parties previously had agreed to submit all disputes arising in connection with the Merger Agreement to binding arbitration.

Rayborn sought to escape the mandatory arbitration provision of the Merger Agreement by alleging that the Merger Agreement as a whole was fraudulently induced. Rayborn has argued that, notwithstanding the arbitration clause, Louisiana law prohibits arbitration of such a claim. The arbitration clause in the Merger Agreement, however, is

controlled by the Federal Arbitration Act, which does not permit a party to avoid its promise to arbitrate simply by alleging fraud in the inducement of a contract as a whole.

Petitioners objected to Rayborn's claims on the grounds that the trial court lacked subject matter jurisdiction and sought to compel arbitration proceedings pursuant to the Merger Agreement and the Federal Arbitration Act. On August 21, 1997, the trial court overruled Petitioners' objection based on the Federal Arbitration Act and stayed any arbitration of the dispute. The trial court incorrectly held that the Federal Arbitration Act did not govern the arbitration clause at issue and found that Louisiana law prohibited the arbitration of Rayborn's claim of fraud in the inducement.

Petitioners appealed and sought to compel arbitration of Rayborn's claims. Petitioners also asked that further proceedings on Rayborn's claims be stayed pending the outcome of the appeal.

By opinion dated December 3, 1997, the Louisiana Fourth Circuit Court of Appeal ("Court of Appeal") affirmed the trial court's decision. (App., *infra*, 8a). The Court of Appeal correctly determined that the Federal Arbitration Act governed the arbitration clause. (App., *infra*, 5a). However, the Court of Appeal held that this Court's 1996 decision in *Doctor's Associates* allowed generally applicable state law contract defenses, such as fraud, duress or unconscionability, to invalidate an arbitration clause without contravening the Federal Arbitration Act. (App., *infra*, 5a). Thus, the Court of Appeal erroneously ruled that the Federal Arbitration Act permits parties to avoid arbitration simply by alleging fraud in the inducement of the contract.

On December 12, 1997, Petitioners asked for rehearing. Rehearing was refused without comment on December 30, 1997. (App., *infra*, 12a).

On January 29, 1998, Petitioners sought discretionary review from the Louisiana Supreme Court. Again, Petitioners sought a stay of Rayborn's claims under the Merger Agreement. On March 13, 1998, the Supreme Court of Louisiana, with two Justices dissenting, denied Petitioners' application for review and stay. (App., *infra*, 1a). Accordingly, Petitioners seek a Writ of Certiorari from this Court.[1]

REASONS FOR GRANTING THE WRIT

The Federal Arbitration Act mandates rigorous enforcement of arbitration clauses in contracts affecting interstate commerce.

In *Prima Paint Corp. v. Flood and Conklin Mfg. Co.*, 388 U.S. 395, 403, 404 (1967), this Court held that a party to a contract containing an arbitration clause may not avoid arbitration simply by claiming that the entire contract is invalid. Accordingly, *Prima Paint* sets the legal standard -- now well established -- that an arbitration clause must be enforced unless the clause itself specifically is found to be invalid.

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[1] Contemporaneously with this petition, Petitioners have applied for a stay of Rayborn's claims pending final action on this petition and/or review of the Court of Appeal's decision.

In *Doctor's Associates*, this Court held that no state may treat an arbitration clause differently from any other contractual obligation. *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681 (1996). Consistent with the policies underlying the Federal Arbitration Act, as well as *Prima Paint*, *Doctor's Associates* stands for the proposition that states may not impose additional enforceability requirements on arbitration clauses to make them easier to avoid.

The majority opinion below read *Doctor's Associates* as overruling *Prima Paint* and 30 years of United States Supreme Court precedent. *Prima Paint* remains as viable today as when it was decided in 1967. Moreover, this Court's decision in *Prima Paint* is dispositive of this dispute. The Court of Appeal should have applied *Prima Paint* and reversed the trial court's refusal to enforce the arbitration clause.

Rayborn's claims center around the sale of Sun pursuant to the Merger Agreement. Specifically, Rayborn seeks:

- rescission of the Merger Agreement and related agreements,
- damages for breach of, and conspiracy to breach, the Merger Agreement and related contracts,
- damages for alleged violation of, and conspiracy to violate, Louisiana's Unfair Trade Practices and Consumer Protection Law in accordance with performance of the Merger Agreement and related agreements,
- damages for breach of, and conspiracy to breach, the Merger Agreement and related contracts, and
- damages for allegedly tortiously interfering, and conspiring to tortiously interfere, with the Merger Agreement.

The Merger Agreement, however, states unambiguously that all disputes arising in connection with it must be submitted to binding arbitration:

> All disputes arising in connection with this agreement shall be finally settled under the rules and regulations of the American Arbitration Association . . . .

See Merger Agreement, Article XV, ¶18.2 (App., *infra*, 20a). Thus, Rayborn's claims "arise in connection with" the Merger Agreement and, according to the clear holding *Prima Paint*, must be resolved by arbitration, not judicial process.

I. *Doctor's Associates* Did Not Overrule *Prima Paint Sub Silentio.*

In its majority opinion, the Court of Appeal held that the Federal Arbitration Act governed the arbitration clause at issue. *Sun Drilling Products Corp. v. Rayborn*, 703 So.2d 818, 818 (La. Ct. App. 1997). Inexplicably, however, the Court of Appeal failed to apply (or even mention) *Prima Paint*, the seminal, dispositive, and still oft-cited case on the issue. Instead, the Court of Appeal misapplied *Doctor's Associates*, in a way fatally inconsistent with *Prima Paint*. According to the Court of Appeal, this Court held in *Doctor's Associates* that the Act permits a party to escape the operation of an arbitration clause merely by asserting generally applicable contract defenses -- such as fraud in the inducement. (App., *infra*, at 5a). This was not the holding of *Doctor's Associates*, a decision that by its own terms does not apply to this case. Thus, the Court of Appeal erred by applying *Doctor's Associates* to this case and interpreting it as having overruled *Prima Paint*.

In *Prima Paint*, this Court held that, under the Federal Arbitration Act, a binding arbitration clause, such as that found in the Merger Agreement, must be enforced unless the arbitration clause itself specifically is found to be invalid. Thus, a party may not avoid an arbitration provision merely by claiming that the entire agreement is invalid. *Prima Paint*, 388 U.S. at 406. Rather, a party seeking to avoid arbitration must contend (and ultimately prove) that the specific arbitration provision itself was coerced, obtained fraudulently, or is otherwise *void ab initio*. *Id.* This Court analyzed the split in the circuits on the issue. The United States Court of Appeals for the Second Circuit, which was affirmed by the Court, held that "a broad arbitration clause will be held to encompass arbitration of the claim that the contract itself was induced by fraud." *Id.* at 402.

The decision in *Prima Paint* is good law today. No subsequent decision of this Court has disturbed the viability of *Prima Paint*. A Sheppards analysis establishes that *Prima Paint* has been cited more than 900 times. Cited ten times by this Court,[2] *Prima Paint* has never been overruled,

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[2] *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265 (1995); *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468 (1989); *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22 (1988); *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196 (1988); *Perry v. Thomas*, 482 U.S. 483 (1987); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985); *Southland Corp. v. Keating*, 465 U.S. 1, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984); *Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.*, 460 U.S. 1 (1983); *Scherk v. Alberto-Culver Co.*, 417 U.S. 506 (1974); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Ware*, 414 U.S. 117 (1973).

criticized, or questioned in any way. *Prima Paint* has never been criticized by any of the federal courts that have relied upon it.[3]

Doctor's Associates does not alter this conclusion. In *Doctor's Associates*, this Court did not even mention *Prima Paint* -- much less overrule it. There, the issue was whether a state law may treat an arbitration clause differently than any other contract. More specifically, *Doctor's Associates* involved "whether Montana's law [invalidating arbitration clauses unless they are typed in underlined capitalized letters on the first page of the contract] is compatible with the federal [arbitration] Act." 517 U.S. at 683. This Court held that because Montana's first page requirement applied only to arbitration agreements and not contracts generally, it conflicted with the Federal Arbitration Act and was therefore invalid. *Id.*

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[3] Of the 640 federal decisions that have cited *Prima Paint*, only one federal district court opinion arguably has questioned the *Prima Paint* decision, and one opinion has purported to limit the *Prima Paint* decision. *Maye v. Smith Barney, Inc.*, 897 F. Supp. 100, 106 (S.D.N.Y. 1995) questioned the *Prima Paint* distinction between attacks on the arbitration agreement itself and the attack on the contract as a whole, but subsequent opinions of the United States Court of Appeals for the Second Circuit continue to apply the holding of *Prima Paint*. *See Doctor's Assocs., Inc. v. Distajo*, 66 F.3d 438 (2nd Cir. 1995) and *Doctor's Assocs., Inc. v. Distajo*, 107 F.3d 126 (2nd Cir. 1997). *Three Valleys Municipal Water District v. E.F. Hutton Co., Inc.*, 925 F.2d 1136 (9th Cir. 1991), which purports to limit *Prima Paint*, is distinguishable. In *Three Valleys*, the issue was whether a signatory to a contract that provided for binding arbitration had the authority to bind the named party. No such "authority" issue is presented here.

For instance, this Court noted its previous decisions on the issue:

> States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause "upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The Act makes any such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal 'footing,' directly contrary to the Act's language and Congress's intent.

Doctor's Associates, 517 U.S. at 686. (citations omitted).[4] This Court neither held nor intimated that a claim of fraud in

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[4] Thus, consistent with *Prima Paint*, this Court in *Doctor's Associates* distinguished invalidation of an arbitration *clause*, specifically, due to fraud, from a claim that the entire contract is void *ab initio* due to fraud. This Court noted that "generally applicable contract defenses, such as fraud, duress or unconscionability, may be applied to invalidate arbitration agreements without violating" the Federal Arbitration Act. *Doctor's Associates*, 517 U.S. at 687. This Court's use of the term "agreement" did not nullify *Prima Paint*, which mandates that general claims of fraud of the whole contract will not vitiate an arbitration clause.

Moreover, the cases relied upon in *Doctor's Associates* do not address the question presented by Sun and HHDS&P. In *Allied-Bruce*,

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the inducement of a contract must be tried rather than arbitrated.

Thus, the Court held in *Doctor's Associates* that "[c]ourts may not. . . invalidate arbitration agreements under state laws applicable only to arbitration provisions." 517 U.S. at 687. This Court did not overrule or modify its time-tested *Prima Paint* decision.[5]

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this Court held that the wording of the Federal Arbitration Act did not restrict the Act's application and thereby allow a state to apply its arbitration law or policy to contracts affecting interstate commerce. 513 U.S. 265. In *Volt*, 489 U.S. 468, this Court held that the Act did not preempt California law which permits courts to stay arbitration pending resolution of related litigation involving third parties not bound by the arbitration agreement where the parties agreed in the contract to abide by state rules of arbitration. In *Rodriguez De Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 109 S.Ct. 1917 (1989) and *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220 (1987), this Court simply held that predispute agreements to arbitrate claims were enforceable. Not only do these cases not apply to our situation, but they also all upheld the enforceability of contractual arbitration clauses.

Finally, another case cited by this Court in *Doctor's Associates* is *Southland*, 465 U.S. 1. *Southland* stands for the proposition that in enacting the Federal Arbitration Act, Congress intended to foreclose state legislative attempts to undercut the enforceability of arbitration agreements. *Id.* *Southland* does not deal with the issue of whether an arbitration clause is vitiated by a claim of fraud in the inducement of the contract, rather than of the arbitration provision. *Id.*

5 None of the briefs in *Doctor's Associates* focused on *Prima Paint* or the issues decided therein. No one in *Doctor's Associates* urged

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After *Doctor's Associates*, many courts have affirmed the viability of *Prima Paint*.[6] None of these several dozen cases has suggested that *Doctor's Associates* is inconsistent with *Prima Paint* or affects its holding in any way.[7] Accordingly,

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this Court to overrule or limit the validity of *Prima Paint*. *See* 1996 WL 71823 (Successful Petitioner's Brief, in which *Prima Paint* and the issue raised therein are nowhere mentioned); 1996 WL 115790 (Respondent's Brief); 1996 WL 157351 (Reply Brief); 1996 WL 115782, 75703, 75698, 78299 (*Amicus Curiae* Briefs).

[6] *See, e.g.*, *Cular v. Metropolitan Life Insurance Company, et al.*, 961 F. Supp. 550 (S.D.N.Y. Mar. 27, 1997); *Latifi v. Sousa*, 1996 WL 735260 (N.D. Ala., Dec. 23, 1996); *Capitol Vial, Inc. v. Weber Scientific*, 966 F. Supp. 1108 (M.D. Ala., June 4, 1997); *Carro Rivera v. Parade of Toys, Inc.*, 950 F. Supp. 449 (D. Puerto Rico, Dec. 23, 1996); *Gregory v. Electro-Mechanical Corp.*, 83 F.3d 382 (11th Cir. 1996); *Doctor's Assocs., Inc. v. Distajo*, 66 F.3d 438, 457 (2nd Cir. 1995) and *Doctor's Assocs., Inc. v. Distajo*, 107 F.3d 126 (2nd Cir. 1997); *Freeman v. Minolta Business Systems, Inc.*, 699 So.2d 1182 (La. App. 2 Cir., Sept. 24, 1997); *Matter of Teleserve Systems, Inc.*, 659 N.Y.S.2d 659 (N.Y.A.D. 4 Dept., May 30,1997); *Windham Foods, Inc. v. Fleming Companies, Inc.*, 1997 WL 269387 (Ohio App. 11 Dist., May 2, 1997); *Palm Harbor Homes, Inc. v. McCoy*, 944 S.W.2d 716 (Tex. App. - Fort Worth, Apr. 10, 1997); *Towe Hester & Erwin, Inc. v. Kansas City Fire & Marine Ins. Co.*, 1997 WL 656991 (Okla. Civ. App. Div., Apr. 1, 1997); *Wilharm v. M.J. Const. Co.*, 1997 WL 72138 (Ohio App. 8 Dist., Feb. 20, 1997); and *Smith v. Cumberland Group, Ltd.*, 687 A.2d 1167 (Pa. Super., Jan. 21, 1997.

[7] That *Doctor's Associates* was not seen by the lower federal courts as affecting *Prima Paint* was explicitly illustrated by *Rainbow Investments, Inc. v. Super 8 Motels, Inc.*, 973 F.Supp. 1387 (M.D.Ala.

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Prima Paint governs this case and should have been applied by the Court of Appeal.

II. The Court Of Appeal's Decision Contravenes The Letter And Spirit Of The Federal Arbitration Act And *Prima Paint* And Its Progeny.

The Federal Arbitration Act provides a means to enforce mandatory arbitration clauses in contracts which affect interstate commerce. *Southland Corp.*, 465 U.S. 1. The substantive rights afforded by the Act must be enforced by

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1997). There, the district court rejected precisely the argument Rayborn has argued.

> In this regard, Rainbow Investments is entirely mistaken when it states that "[*Allied-Bruce*] reserved the right to the Court to invalidate contracts containing arbitration clauses 'upon such grounds as exist at law or in equity for the revocation of any contract.'" In fact, as the Supreme Court reiterated in *Doctor's Assocs., Inc. v. Casarotto . . . Allied-Bruce* restated what earlier Court decisions had established: that States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause 'upon such grounds as exist at law or in equity for the revocation of any contract.' In other words, these later Court decisions are entirely in accord with the Prima Paint distinction between a challenge to a whole contract, and a challenge to an arbitration clause within a contract.

Id. at 1390 (emphasis added) (citations and quotations omitted).

both federal and state courts. *Id.* at 12. The Court of Appeal specifically held that the Act governed the arbitration clause in the Merger Agreement.[8]

The Act "is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary." *Moses H. Cone*, 460 U.S. at 24. The Act has created "a body of federal substantive law of arbitrability, applicable to any Arbitration Agreement within the coverage of the Act." *Id.* at 24. *See also Perry*, 482 U.S. at 489; *Allied-Bruce*, 513 U.S. 265.

Indeed, the Court of Appeal faced exactly the issue presented to this Court in *Prima Paint*: "Having determined that the contract in question is within the coverage of the [Federal] Arbitration Act, we turn to the central issue in this case: whether a claim of fraud in the inducement of the entire contract is to be resolved by the federal court, or whether the matter is to be referred to the arbitrators." *Prima Paint*, 388 U.S. at 402.

In its disregard of *Prima Paint*, the Court of Appeal's decision smacks of the "old common law hostility toward

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[8] The Louisiana trial court relied upon the Louisiana Supreme Court's decision in *George Engine Co., Inc. v. Southern Shipbuilding Corp.*, 350 So.2d 881 (La. 1977), in deciding that claims alleging fraud in the inducement of the Merger Agreement were not arbitrable. The Louisiana Court of Appeal did not rely upon *George Engine*, however, because: 1) *George Engine* interpreted the Louisiana Arbitration Act; and 2) *George Engine* was decided prior to case law which established that the Act applied in state, as well as, federal courts.

arbitration" that the Federal Arbitration Act was intended to overcome. *Southland*, 465 U.S. at 14. As this Court has observed, "we are well past the time when judicial suspicion of the desirability of arbitration and of the competence of arbitral tribunals should inhibit enforcement of the Act." *McMahon*, 482 U.S. at 226 (quotations and citations omitted).

This Court has vigilantly protected the rights of contracting parties who have agreed to settle disputes through arbitration. *See Perry*, 482 U.S. at 490-91; *McMahon*, 482 U.S. at 226; *Mitsubishi Motors*, 473 U.S. at 625-26. Indeed, Congress intended the Federal Arbitration Act to overcome certain courts' refusals to enforce agreements to arbitrate. *See Allied-Bruce*, 513 U.S. at 270 and *Volt*, 489 U.S. at 474. By enacting the Federal Arbitration Act, Congress declared a national policy favoring arbitration and curtailed state power to mandate a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration. *Southland*, 465 U.S. at 10.

Contractual arbitration provisions have been used with increasing frequency in recent years. Parties find these provisions to be a useful means of contractually allocating certain risks and avoiding litigation over the proper forum for a dispute. Although a party may see the wisdom of an arbitration clause at the time of contracting, when a dispute arises that same party may be much more interested in litigating in the forum that is most favorable to that party's claim. Consequently, it is not surprising that many parties may seek to avoid contractual provisions that require arbitration.

Undoubtedly, parties will construe the Court of Appeal's panel decision in this case as presenting a broad path to circumvent an arbitration clause. Through the simple expedient of pleading a general claim of fraud in the inducement against the other contracting party, parties will drag their adversary and the court through an expensive trial, notwithstanding a contractual provision requiring arbitration.

This case illustrates how arbitration clauses can be circumvented if the Court of Appeal's decision is not corrected. In this fashion, Rayborn has sidestepped the arbitration clause and obtained a judicial proceeding for his claims, although he expressly agreed to resolve claims relating to the Merger Agreement through arbitration. This Court should not tolerate this blatant attempt to avoid a party's promise to submit disputes to arbitration. The Court should grant the writ of certiorari and clarify that arbitration clauses may not be circumvented in this manner.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be granted.

Respectfully submitted,

Douglas Y. Christian
Elaine T. Petrossian
REED SMITH SHAW & MCCLAY LLP
2500 One Liberty Place
Philadelphia, PA 19103
(215) 851-8256/8298

Attorneys For Petitioners

APPENDIX

SUN DRILLING
PRODUCTS CORPORATION

VS. NO. 98-CC-0278

JERRY J. RAYBORN, SR.

IN RE: Sun Drilling Products Corp.; Heller, Hickox, Dimeling et al; Astugue, Hyppolete; Reese, Susan; Heller, Douglas, P.; Hickox, George, J.; Tuten, John C.; - Plaintiff (s); Applying for Supervisory and/or Remedial Writs; to the Court of Appeal, Fourth Circuit, Number 97CW-2112; Parish of Plaquemines 25th Judicial District Court Div. "B" Number 41-857

March 13, 1998

Denied.

JPV

PFC

CDK

BJJ

JTK

Marcus, J. would grant the writ.

Lemmon, J. would grant the writ.

Traylor, J. not on panel.

Supreme Court of Louisiana
March 13, 1998

/s/
Clerk of Court
For the Court

SUN DRILLING PRODUCTS CORPORATION

VERSUS

JERRY J. RAYBORN, SR.

NO. 97-C-2122

COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA

ON SUPERVISORY WRIT FROM THE
25th JUDICIAL DISTRICT COURT, PLAQUEMINES
PARISH NO. 41-857, DIVISION "B"
HONORABLE WILLIAM A. ROE, JUDGE

* * * * * * * *

WILLIAM H. BYRNES, III
JUDGE

* * * * * * * *

(Court composed of Judge Robert J. Klees and Judge William H. Byrnes, III and Judge Steven R. Plotkin)

PLOTKIN, J., CONCURS WITH REASONS

GEORGE PIVACH, II
Pivach & Pivach, L.L.C.
Belle Chasse, Louisiana
-and-
DOUGLAS Y. CHRISTIAN
ROBERT A. KAUFFMAN
MICHAEL P. WALSH
Reed Smith Shaw & McClay
2500 One Liberty Place
Philadelphia, PA
-and-

EDWARD D. WEGMANN
Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P.
New Orleans, Louisiana
Attorneys for Relators

PETER J. BUTLER
PETER J. BUTLER, JR.
RICHARD G. PASSLER
Breazeale, Sachse & Wilson, L.L.P.
New Orleans, Louisiana
-and-
PHILIP F. COSSICH, JR.
Cossich, Martin & Sumich, L.L.C.
Belle Chasse, Louisiana
Attorneys for Jerry J. Rayborn, Sr.

WRIT GRANTED; RELIEF DENIED

We grant writs in order to review the trial court's judgment that fraud in the inducement of a contract containing a mandatory arbitration clause is a matter to be decided by the courts of this State rather than by the arbitrator, even where the contract is subject to the Federal Arbitration Act.

This case involves a contract containing a mandatory arbitration clause. Respondent, Jerry J. Rayborn, Sr., attacked the contract in state court and among other things alleged fraud in the inducement. The trial court denied relators'[1] Exception of Lack of Subject Matter Jurisdiction

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[1] Relators are: Sun Drilling Products Corporation, Heller, Hickox, Dimeling, Schreiber & Park; Douglas P. Heller; George K.

Continued on following page

regarding arbitration and stayed the arbitration proceedings finding that the question of fraud in the inducement is not arbitrable.

Under the Federal Arbitration Act generally applicable state law contract defenses, such as fraud, duress or unconscionability, may be applied to invalidate arbitration agreements without contravening Section 2 of the Act. *Doctor's Associates, Inc. v. Casarotto*, 116 S.Ct. 1652, 1655, 134 L. Ed.2d 902 (1996).

Fraud in the inducement is a generally applicable contract defense in Louisiana as distinguished from one applicable only to arbitration situations.

Arbitrations are favored. It is difficult to reconcile the decision of this Court today and the judgment of the trial court with the question raised by the trial judge:

> [W]hat is to stop anyone from making the allegation of fraud or invalidity of the contract to avoid an [arbitration] provision in the contract[?]

In spite of this concern, the trial court ruled that the question of fraud in the inducement is not arbitrable. We share the concern of the trial judge, but like the trial judge are compelled to reach the same result in face of the position

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Continued from previous page

Hickox; William R. Dimeling; Richard R. Schreiber; Steven J. Park; John C. Luten; Hyppolete J. Astugue; and Susan Reese.

taken by the U.S. Supreme Court in *Doctors Associates, Inc.*, supra.

The result reached by this Court is also consistent with the reasoning of the Louisiana Supreme Court in *George Engine, Co., Inc. v. Southern Shipbuilding Corp.*, 350 So.2d 881 (La. 1977). However, *George Engine* did not involve the Federal Arbitration Act.

Moreover, this Court in dicta in *Mt. Airy Refining Co. v. Clark Acquisition, Inc.*, 470 So.2d 890, 892 (La. App. 4 Cir.), *writ denied* 476 So.2d 351 (La. 1985) noted that in Louisiana under *George Engine* the appellant, Clark Acquisition, Inc., "could have filed in court a motion to stay the arbitration proceeding along with a petition to rescind the contract for fraudulent inducement."

George Engine was followed most recently in *Ackel v. Ackel*, 97-70 p. 5 (La. App. 5 Cir. 5/28/97); 696 So.2d 140, 143.

As the policy resolving the question of fraud in the inducement in court rather than through arbitration as originally declared by *George Engine* appears to continue to be the policy of this state; and as *Doctors Associates* permits the application of this policy; therefore, we are constrained to affirm the actions of the trial court regardless of our concerns about the potential havoc this policy could play with arbitration clauses in Louisiana. In that regard we take some comfort in the fact that *George Engine* was decided twenty years ago, and if the paucity of cases in our jurisprudent is any indication, the potential for abuse of the arbitration process noted by the trial judge has never been realized. However, as the use of alternative dispute resolution methods, including arbitration, is assuming ever increasing

prominence in Louisiana and elsewhere, the Louisiana Supreme Court may wish to revisit *George Engine* at this time. The *George Engine* court referred to "a natural reluctance to surrender the historical jurisdiction of courts," a reluctance that no longer exists. We also wish to call to the attention of the Supreme Court the apparent conflict between the above cited Fifth Circuit *Ackel* decision and *Freeman v. Minolta*, 29655 p. 13 (La. Ap. 2 Cir. 9/24/97); 699 So.2d 1182, 1189, where the Second Circuit stated:

> Federal jurisprudence holds that if the claim is fraud in the inducement of the arbitration clause itself, an issue as to the "making" of the agreement to arbitrate, the federal court may proceed to adjudicate it. However, the statutory language does not permit the federal court to consider claims in the inducement of the contract generally.

Ackel took the contrary position stating that:

> The presence of an arbitration clause in a contract does not divest the district court of jurisdiction to determine the underlying contract's validity.

Ackel, p.6, 696 So.2d at 143-144.

We admit to some skepticism at the attempt by the Second Circuit in *Freeman* to draw a distinction between fraud in the inducement of the arbitration clause and fraud in the inducement of the contract generally. Although it is a distinction that is not original to *Freeman* as may be seen by referrence [sic] to the authorities cited therein, it strikes this court as being an overly fine distinction. As the Louisiana

Supreme Court stated in *George Engine*, the enforcement of the right to arbitration "presupposes the existence of a valid contract as a basis for invoking arbitration." If arbitration is the desired outcome, it would be better to face the issue head-on and hold outright that the question of arbitration is arbitrable because public policy today so favors arbitration and the alternative is open to so much abuse, than to draw what seems to be a distinction without a difference or a sound basis in reason. In response to *Freeman* a clever lawyer should not find it too difficult to frame his pleadings in terms of fraudulent inducement in the arbitration clause rather than fraudulent inducement in the contract as a whole.

For the foregoing reasons the judgment of the trial court denying relator's Exception of Lack of subject Matter Jurisdiction and granting respondent's Motion to Stay Arbitration is affirmed.

WRIT GRANTED; RELIEF DENIED

SUN DRILLING PRODUCTS CORPORATION * NO. 97-C-2122

* COURT OF APPEAL

VERSUS

* FOURTH CIRCUIT

JERRY J. RAYBORN, SR.

* STATE OF LOUISIANA

* * * * * * * *

PLOTKIN, J. CONCURRING WITH WRITTEN REASONS:

I respectfully concur in the majority's decision holding that the issue of fraud in inducement of a contract containing a mandatory arbitration clause may be decided by a Louisiana state court. Under the most recent jurisprudence from the United States Supreme Court and from Louisiana courts, the issue of fraud in the inducement of the contract is not subject to the mandatory arbitration requirement.

The Federal Arbitration Act, which applies to the contract at issue in the instant case because the contract affects interstate commerce, provides, in pertinent part, as follows:

> A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any party thereof, . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."

9 U.S.C. § 2. In the most recent United States Supreme Court case on this issue, the court interpreted the above provision as follows:

> In *Southland [Corp. v. Keating*, 465 U.S. 1, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984)], we held that § 2 of the FAA applies in state as well as federal courts, see 465 I/S/. at 12, 104 S. Ct., at 859, and "withdr[aws] the power of the states to require a judicial form for the resolution of claims which the contracting parties agreed to resolve by arbitration." *id.* at 10, 104 S.Ct., at 858. We noted int [sic] he [sic] pathmarking *Southland* decision that the FAA established a "broad principle of enforceability," *id.*, at 11, 104 S.Ct., at 858, and that § 2 of the federal Act provided for revocation of arbitration agreements only upon "grounds as exist at law or in equity for the revocation of any contract." In *Perry [v. Thomas*, 482 U.S. 483, 107 S.Ct. 2520, 96 L.Ed.2d 426 (1987)], we reiterated: "[S]tate law, whether of legislative or judicial origin, is applicable if that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally.

Doctor's Associates Inc. v. Casarotto, 116 S.Ct. 1652, 1655 (1996). Thus, under the rule enunciated by the *Doctor's Associates* case, state courts may decide allegations that a contract is invalid, revocable, or unenforceable under state law; such issues are not required to be submitted to arbitration.

As the majority notes, the rule enunciated in *Doctor's Associates* is consistent with the Louisiana Supreme Court's

most recent case on this issue, *George Engine, Co. v. Southern Shipbuilding Corp.*, 350 So. 2d 881 (La. 1977), which allowed a party to sue to rescind a contract containing an arbitration clause on the grounds that the contract was void *ab initio* in a court of competent jurisdiction. That rule was also followed in *Ackel v. Ackel*, 97-70 (La. App. 4 Cir. 5/28/97), 696 So. 2d 140, 143. *See also Mt. Airy Refining Co. v. Clark Acquisition, Inc.*, 470 So. 2d 890, 892 (La. App. 4th Cir.), *writ denied*, 476 So. 2d 351 (La. 1985).

The relator in the instant case argues for the application of a federal rule which distinguishes between a claim of fraud in the inducement of an arbitration clause itself and fraud in the inducement of the contract, allowing a federal court to hear a claim alleging fraud in the inducement of an arbitration clause, but requiring a claim alleging fraud in the inducement of the contract itself to be decided by an arbitrator. That rule was followed in *Freeman v. Minolta Business Systems*, 618, 29, 655 (La. App. 2 Cir. 9/24/97), 699 So. 2d 1182, 1189, which in turn relied on a 1967 United States Supreme Court case, *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, 388 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967). However, under the more recent United States Supreme Court decision, as well as the most recent Louisiana Supreme Court decision, state law, as opposed to federal law, may be applied to this case. Thus, I agree with the majority's decisions to distinguish the *Freeman* case.

COURT OF APPEAL, FOURTH CIRCUIT
STATE OF LOUISIANA

Clerk's Office, New Orleans, _____

DEAR SIR:

REHEARING WAS THIS DAY REFUSED IN THE CASE ENTITLED

SUN DRILLING PRODUCTS CORP. v. RAYBORN, SR.

No. 97-C-2112

Very Truly yours,

DANIELLE A. SCHOTT
CLERK OF COURT

25TH JUDICIAL DISTRICT COURT PARISH OF PLAQUEMINES

STATE OF LOUISIANA

NO. 41-857 DIVISION "B"

SUN DRILLING PRODUCTS CORPORATION

VERSUS

JERRY J. RAYBORN, SR.

FILED: AUG 22 1997 /s/ BETTINA K. PHILLIPS
DEPUTY CLERK

JUDGMENT

On August 21, 1997, this matter came on for hearing on the following:

1. Exception of Lack of Subject Matter Jurisdiction filed by Sun Drilling Products Corporation; Heller, Hickox, Dimeling, Schreiber & Park; Douglas B. Heller; George K. Hickox; William R. Dimeling; Richard R. Schreiber; Stephen G. Park; John C. Tuten; Hyppolete J. Astugue and Susan Reese.

2. Exception of No Cause of Action filed by Sun Drilling Products Corporation; Heller, Hickox, Dimeling, Schreiber & Park; Douglas B. Heller; George K. Hickox; William R. Dimeling; Richard R. Schreiber; Stephen G. Park; John C. Tuten; Hyppolete J. Astugue and Susan Reese.

3. Exception of Failure to Join Indispensable Party filed by Sun Drilling Products Corporation; Heller, Hickox, Dimeling, Schreiber & Park; Douglas B. Heller; George K.

Hickox; William R. Dimeling; Richard R. Schreiber; Stephen G. Park; John C. Tuten; Hyppolete J. Astugue and Susan Reese.

4. Motion to Stay Arbitration filed by Jerry J. Rayborn, Sr.

5. Motion to Compel Discovery Responses and for Sanctions (first set of discovery) filed by Jerry J. Rayborn, Sr.

6. Motion to Compel Discovery (second set of discovery) filed by Jerry J. Rayborn, Sr.

7. Motion for Protective Order and Amended Motion for Protective Order filed by Sun Drilling Products Corporation; Heller, Hickox, Dimeling, Schreiber & Park; Douglas B. Heller; George K. Hickox; William R. Dimeling; Richard R. Schreiber; Stephen G. Park; John C. Tuten; Hyppolete J. Astugue and Susan Reese.

Present were:

Peter J. Butler, Richard G. Passler, Philip F. Cossich, Jr., and Les A. Martin, counsel for Jerry J. Rayborn, Sr.

Robert Kaufman [sic], Douglas Y. Christian and George Pivach, II, counsel for Sun Drilling Products Corporation, Heller, Hickox, Dimeling, Schreiber & Park; Douglas B. Heller; George K. Hickox; William R. Dimeling; Richard R. Schreiber; Stephen G. Park; John C. Tuten; Hyppolete J. Astugue and Susan Reese.

Edward D. Wegmann, co-counsel for Hyppolete J. Astugue and Susan Reese.

Considering the pleadings, memorandum, the arguments of counsel and the entire record of this proceeding, for the reasons orally assigned:

IT IS ORDERED that the Exception of Lack of Subject Matter Jurisdiction filed by Sun Drilling Products Corporation; Heller, Hickox, Dimeling, Schreiber & Park; Douglas B. Heller; George K. Hickox; William R. Dimeling; Richard R. Schreiber; Stephen G. Park; John C. Tuten; Hyppolete J. Astugue and Susan Reese, be and is hereby OVERRULED;

IT IS FURTHER ORDERED that the Exception of No Cause of Action filed by Sun Drilling Products Corporation; Heller, Hickox, Dimeling, Schreiber & Park; Douglas B. Heller; George K. Hickox; William R. Dimeling; Richard R. Schreiber; Stephen G. Park; John C. Tuten and Hyppolete J. Astugue, be and is hereby OVERRULED;

IT IS FURTHER ORDERED that the Exception of No Cause of Action filed by Susan Reese is hereby GRANTED, and Jerry j. Rayborn, Sr. is given fifteen (15) days to amend his Reconventional Demand against Susan Reese.

IT IS FURTHER ORDERED that the Exception of Failure to Join and Indispensable Party is hereby GRANTED, and Jerry J. Rayborn, Sr. shall have fifteen (15) days to join Jerry J. Rayborn, Jr., Jeffrey Rayborn, and Joel Rayborn to this lawsuit.

IT IS FURTHER ORDERED that the Motion to Stay Arbitration filed by Jerry J. Rayborn, Sr. be and the same is hereby GRANTED and Arbitration No. 14 180 00245 97 V/J entitled "Sun Drilling Products Corporation and Heller, Hickox, Dimeling, Schreiber & Park and Jerry J. Rayborn, Sr., Jerry J. Rayborn, Jr., Jeffrey Rayborn and Joel Rayborn" pending before the American Arbitration Association in Philadelphia, Pennsylvania be and is hereby STAYED pending further orders of this Court and the parties thereto be and are hereby precluded from taking any action or otherwise participating in any manner in said arbitration pending further orders of this Court;

IT IS FURTHER ORDERED that the Motion to Compel Discovery Responses and for Sanctions (first set of

discovery) filed by Jerry j. Rayborn, Sr. and the Motion to Compel Discovery (second set of discovery) filed by Jerry j. Rayborn, Sr. be and are hereby GRANTED and Sun Drilling Productions [sic] Corporation; Heller, Hickox, Dimeling, Schreiber & Park; Douglas B. Heller; George K. Hickox; William R. Dimeling; Richard R. Schreiber; Stephen G. Park; John C. Tuten; Hyppolete J. Astugue and Susan Reese be and are hereby required to fully and completely respond to all of the discovery at issue in said Motions, within thirty (30) days and for all documents which a privilege is claimed, a privilege log shall be provided which shall include the authors(s), recipient(s), sender(s) and dates(s) [sic], a description of the nature and subject matter of the document; and the basis for the claim of privilege;

IT IS FURTHER ORDERED that the Motion for Protective Order and Amended Motion for Protective Order is DENIED.

Judgment rendered this 21st day of August, 1997.

Judgment signed this ____ day of Aug 22 1997, 1997, Point-a-la-Hache, Louisiana

/s/
JUDGE

A TRUE COPY

/s/
Dy. clerk of Court
Parish of Plaquemines, La.

AGREEMENT

By and Among

JERRY J. RAYBORN, SR., JERRY J. RAYBORN, JR., JEFFREY RAYBORN, JOEL RAYBORN,

SUN DRILLING PRODUCTS CORPORATION, A LOUISIANA CORPORATION,

HELLER, HICKOX, DIMELING, SCHREIBER & PARK

And

SUN ACQUISITION CORPORATION

December 8, 1994

AGREEMENT

THIS AGREEMENT, made this 8th day of December, 1994, by and among JERRY J. RAYBORN, SR., JERRY J. RAYBORN, JR., JEFFREY RAYBORN, JOEL RAYBORN (Jerry J, J. Rayborn, Sr., Jerry j. Rayborn, Jr., Jeffrey Rayborn, Joel Rayborn collectively referred to as the "Company Shareholders"; Jerry j. Rayborn, Sr. sometimes individually referred to herein as "Exchange Agent"), SUN DRILLING PRODUCTS CORPORATION, a Louisiana corporation ("Company"), HELLER, HICKOX, DIMELING, SCHREIBER & PARK, a Pennsylvania general partnership ("HHDS&P"), and SUN ACQUISITION CORPORATION, a Louisiana corporation ("Sun Acquisition"; HHDS&P and Sun Acquisition are collectively referred to herein as "Buyer").

WITNESSETH:

WHEREAS, the partners of HHDS&P or their affiliates own 100% of the issued and outstanding stock of Sun Acquisition; and

WHEREAS, the respective Shareholders and Boards of Directors of Sun Acquisition and Company have each approved the merger of Sun Acquisition with and into Company, with Company as the surviving corporation, upon the terms and conditions set forth herein and in the Plan of Merger attached hereto as Exhibit A (the "Plan of Merger"), and have approved this Agreement (the "Agreement") and the Plan of Merger; and

WHEREAS, in accordance with the terms of the Plan of Merger, it is proposed that Sun Acquisition be merged with and into Company and that the presently issued and outstanding shares of capital stock, par value $10.00 per share of Company be converted into cash; and

WHEREAS, Company and Buyer desire to enter into and carry out the transactions contemplated by this Agreement in

accordance with the terms hereof, the Plan of merger and the provisions of the Louisiana Business Corporation Law.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I
The Merger

1.1 The merger of Sun Acquisition into Company. Subject to the terms and upon the conditions set forth herein, on or

* * * *

Each party to this Agreement agrees to cooperate fully with the other parties hereto and their counsel and accountants and other representatives, will use best efforts to cause satisfaction of the conditions to consummation of the Merger as promptly as possible, and will refrain from a course of action inconsistent with this Agreement of the Plan of Merger. Each party shall, upon request of any of the other parties hereto, at any time and from time to time execute, acknowledge, deliver and perform all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and instruments of further assurances as may be reasonably necessary or appropriate to carry out the provisions and intent of this Agreement or the Plan of Merger.

ARTICLE XVIII
Miscellaneous

18.1 Dispute Resolution.

(a) This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to any jurisdiction's conflicts of laws provisions.

(b) All disputes arising in connection with this Agreement shall be finally settled under the rules and regulations of the American Arbitration Association and judgment upon any award rendered by the arbitration panel may be entered in any court having jurisdiction thereof. The arbitration panel shall be composed of one arbitrator chosen by Buyer, one arbitrator chosen by Jerry J. Rayborn, Sr., and an umpire chosen by the two arbitrators. The arbitration will be conducted in Philadelphia, Pennsylvania. If either party fails to select an arbitrator (a "defaulting party") within 30 days of receipt of written notice of a dispute from the other party including a demand that the party select an arbitrator, the defaulting party shall be deemed to have agreed with the non-defaulting party's interpretation of the dispute.

18.2 Counterparts/Use of Facsimiles. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement. The reproduction of signatures by means of a telecopying device shall be treated as though such reproductions are executed originals and each party hereto covenants and agrees to provide the other parties with a copy of this Agreement bearing original signatures within five days following transmittal by facsimile.

18.3 Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto respecting its subject matter and supersedes all negotiations, preliminary agreements and prior or contemporaneous discussions and understandings of the parties hereto in connection with the subject matter hereof.

* * * *

IN WITNESS WHEREOF, each of the parties has executed or caused this Agreement to be executed where applicable by its duly authorized officer and has caused its corporate seal or stamp to be affixed hereto and attested by its Secretary or Assistant Secretary or other authorized person, as of the date first above written.

WITNESS:

/s/ David N. Corken

/s/ Jerry J. Rayborn, Sr.
JERRY J. RAYBORN, SR.

WITNESS:

/s/ David N. Corken

/s/ Jerry J. Rayborn, Jr.
JERRY J. RAYBORN, JR.*

WITNESS:

/s/ David N. Corken

/s/ Jeffrey Rayborn
JEFFREY RAYBORN*

WITNESS:

/s/ David N. Corken

/s/ Joel Rayborn
JOEL RAYBORN*

ATTEST:

SUN DRILLING PRODUCTS CORPORATION, a Louisiana corporation

/s/ H. Astugue

By /s/ Jerry J. Rayborn, Sr.
President

WITNESS:

HELLER, HICKOX, DIMELING, SCHREIBER & PARK

/s/ Jerry J. Rayborn, Sr.
* By Jerry J. Rayborn, Sr., agent and attorney-in-fact

/s/ Lisa Ciandra

By /s/ D P. Heller
General Partner

ATTEST:

Sun Acquisition Corporation, a Louisiana corporation

/s/ G. K. Hickox

By /s/ D. P. Heller
President